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**Warren Goldstein, Contributor**

Chair of the History Department, University of Hartford

Trump's 'High Crimes' — Not Treason

0 017 05:38 pm ET | Updated May 17, 2017



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Monday morning as I sat down to write this piece I asked a law professor friend for his “lawyerly” view of my using the word “treason” to describe recent actions of the president of the United States. He of course immediately referred me to the Constitution itself, Article 3, Section 3 to be exact, where treason gets its own section.

Treason against the United States shall consist only in levying war against them, or in adhering to their enemies,

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giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

Pretty high bar, right? That was no accident, as James Madison explained in *Federalist 43*.

But as new-fangled and artificial treasons have been the great engines by which violent factions, the natural offspring of free government, have usually wreaked their alternate malignity on each other, the [Constitutional] convention have, with great judgment, opposed a barrier to this peculiar danger, by inserting a constitutional definition of the crime, fixing the proof necessary for conviction of it, and restraining the Congress, even in punishing it, from extending the consequences of guilt beyond the person of its author.

In other words, because accusations of treason were part of the rough and tumble of politics even then, the framers defined it precisely in the Constitution itself and made it hard to prove. In a persuasive piece for the *Washington Post* back in February, "Five Myths about Treason," Prof. Carlton Larson of UC Davis lays out just how restrictive treason law is. The fact that we're not formally at war with Russia means that even if Trump and his sleazy minions (Paul Manafort, Carter Page, Michael Flynn, and Roger Stone—what a bunch!) really did give "aid and comfort" to Vladimir Putin's efforts to weaken the United States, they haven't committed treason.

That's as far as I'd gotten when the *Washington Post* bombshell exploded all over the Internet yesterday. Did anything change?

The *New Yorker's* Andy Borowitz thought so: "Three Russian Spies Meet in Oval Office," he posted. "After approximately an



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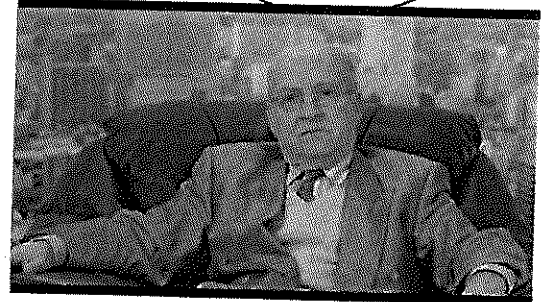
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hour, the meeting broke up, with two of the spies leaving the Oval Office and the third remaining behind.” But being a spy isn’t automatically treasonous. It might be criminal (The Espionage Act), or impeachable (a high crime and misdemeanor) — but it’s not treason. And despite, or perhaps because of Trump’s bluster about his brain, I just don’t think he’s smart enough to be a spy — or a mole, working craftily in the dark for years on behalf of his secret masters. He needs affirmation, which the Sergeys, Lavrov and Kislyak, by the looks of it, were all too happy to provide. Can’t you just hear them? “Oh, that’s a good one, Mr. President! Tell us another!”

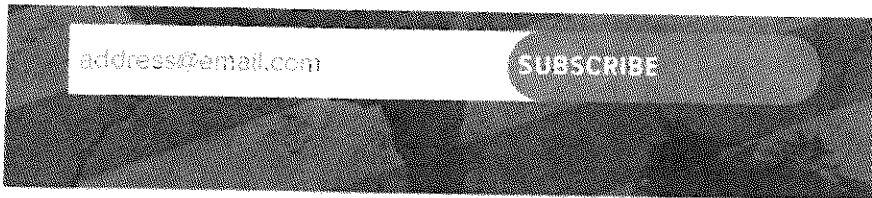
Now that he’s connecting all of the dots for us, in plain sight, I think it’s time to call him a Russian asset — who can be played by genuinely smart Russians just as easily as he is by his staff.

Consider his value as a Russian asset, one who has already 1) derided and impeded his own government’s investigation into his campaign’s ties to Russian intelligence; 2) changed his party’s position on Russia’s annexation of Crimea; 3) defended and kept the national security advisor in office for 18 days after learning that he was deeply compromised by Russian intelligence; 4) retained an Attorney General who lied to Congress about his contacts with the Russian Ambassador; 5) disclosed top-secret intelligence to the Russian Ambassador and Foreign Minister that they can almost certainly use to discover the source of the intelligence, thus putting the source at grave personal risk; and 6) likened his own intelligence community to Nazi Germany. From Putin’s perspective, Trump’s only mistake so far is that he’s generating too much pushback. But Putin wins either way: by getting compliant policies or by turning American politics into a nonstop circus.

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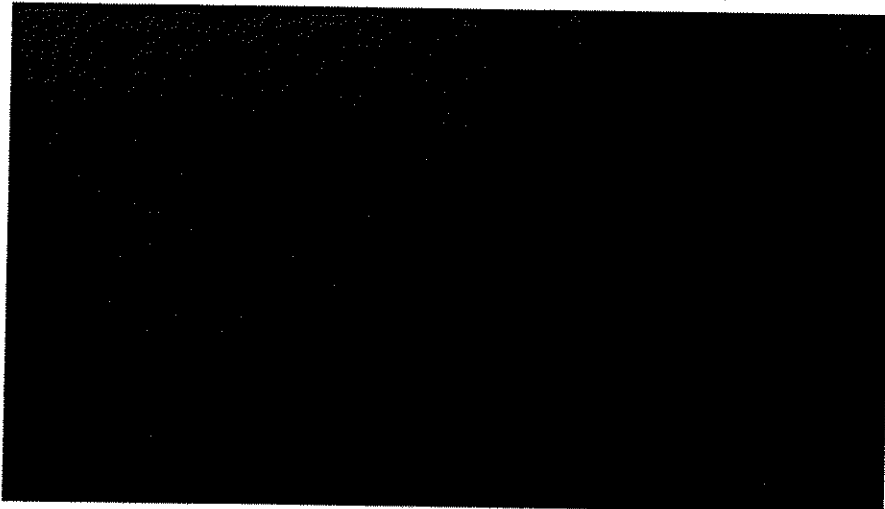
In his oath of office, the president promised to “faithfully execute the Office of President,” and, “to the best of my ability, preserve, protect and defend the Constitution of the United States.”

Instead, Trump’s making a mockery of the office. Instead of defending the Constitution, he’s acting on behalf of a foreign adversary, and making us less safe every day. Heads Putin wins, tails we lose. It may not be treason, but it sure looks like a “high crime” to me.

NOTE: Just as I published this, news broke about Trump asking Comey to drop his investigation of Michael Flynn. I don’t think it changes any of the above, but I have newfound sympathy for the reporters covering the White House. As soon as they publish, they run the risk of being yesterday’s news.

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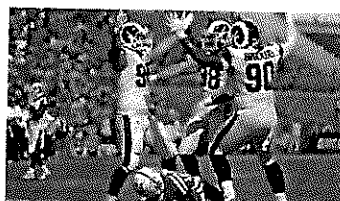


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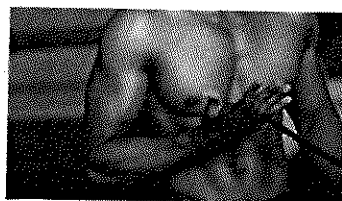
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POLITICS 05/19/2017 07:16 am ET | Updated May 19, 2017

Friday's Morning Email: The Latest In The Trump-Comey Saga

And Michael Flynn has yet to cooperate with the Senate Intelligence Committee.

By Lauren Weber



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KORIN ROBERTS / REUTERS

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THE TRUMP-COMEY SAGA CONTINUES President Donald Trump lashed out against the idea of a "special counsel appointment" Thursday, saying it was harmful for the country. More stories about former FBI Director James Comey's thoughts on the president broke, including reports that Trump asked Comey when the Feds would say he wasn't under investigation, as well as a detail about Comey attempting to blend into the curtains at the White House to avoid interactions with Trump. Comey is 6'8". Deputy Attorney General Rod Rosenstein told senators Thursday that he knew Trump would fire Comey before writing the infamous memo. All the while, Michael Flynn has yet to cooperate with the Senate Intelligence Committee. And many wonder why Trump continues to stand by the man despite denouncing his ties to Paul Manafort and Carter Page. [HuffPost]

TRUMP: FORMER SEN. JOE LIEBERMAN TOP PICK FOR FBI DIRECTOR The other three candidates include "current acting FBI Director Andrew McCabe; Frank Keating, the former governor of Oklahoma who previously served as an FBI agent and in high-level positions in the Justice Department; and Richard McFeely, who served in the FBI for 24 years before retiring as executive assistant director in 2014." [HuffPost]

SWEDEN DROPS SEXUAL ASSAULT CHARGES AGAINST JULIAN ASSANGE However, British police say the Wikileaks founder would still be arrested if he left the Ecuadorian embassy in London. [Reuters]

MAN REPORTEDLY HIGH ON PCP KILLS 1, INJURES 22 BY PLOWING CAR THROUGH TIMES SQUARE Richard Rojas was high on PCP when he mowed down a crowd in New York City before crashing his car into security barricades. [HuffPost]

THIS VISUAL REPRESENTATION OF THE FLOOD THREAT FROM A MELTING ANTARCTICA Doesn't bode well for the world. [NYT]

THE 2016 LITIGATION WILL NEVER END Former Vice President Joe Biden said, "I never thought [Clinton] was the correct candidate. I thought I was the correct candidate." [HuffPost]

JASON CHAFFETZ RESIGNING FROM CONGRESS SHORTLY The chairman of the House Committee on Oversight and Government Reform announced he would step down by June 30, leaving before his term concluded in 2019. He is expected to head to Fox News. [HuffPost]

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their farms dry up and their cattle die, it's impossible for people, many of whom are herders who rely on water, to escape the harsh environmental reality each day. They leave their homes, walking miles on the parched dirt in search of help." [HuffPost]

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TRUMP'S DISASTER RELIEF POLICY RAISING CONCERNS AS HURRICANE AND WILDFIRE SEASON NEARS The Trump administration denied 99 percent of the aid North Carolina Gov. Roy Cooper asked for following Hurricane Matthew. [HuffPost]



READ THE HUFFPOST STORY THAT INSPIRED YOUR NEWEST NETFLIX BINGE The streaming service's "The Keepers" builds off a [HuffPost investigative piece from 2015](#) about a group of Baltimore women trying to solve the 1969 murder of a beloved young nun. [HuffPost]

DID YOU KNOW PLANTS CAN HEAR? Yeah, we didn't either. [HuffPost]

WESTMINSTER ABBEY HAS MADE A CURIOUS STATEMENT PROCLAIMING DIVORCEES COULD GET MARRIED THERE Could this be signaling for Prince Harry and Meghan Markle? And here's your friendly reminder that Pippa Middleton is [getting married tomorrow](#). Prepare yourself for the onslaught. [Vanity Fair]

'HOW "MASTER OF NONE" CAPTURES THE LONELINESS OF CONSTANT CONNECTIVITY' "The resulting collage is a plush image of modern life, its whirlwind moments and its moments of listlessness and isolation." [HuffPost]

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- Roger Alles is dead at 77.
- Chelsea Manning shared the first photo of herself since leaving prison.
- Chris Cornell's cause of death has been ruled a suicide.
- It's incredibly disturbing that this man broke into Amber Rose's house while she slept and just sat there for hours before leaving.
- You'll soon be able to binge (and then be terrified by) another Margaret Atwood creation.
- We wish our parents had sent us to the kindergarten where you get to play in the forest all day long.
- Of course you're going to love Harry Styles' latest "Carpool Karaoke."
- Don't worry "This Is Us" fans — William will be back for Season 2.
- We are all this dog attempting to do human exercises.
- T-Pain and Lil Wayne have collaborated for "T-Wayne." How did we not think of this earlier?
- Trump and Toby Keith are holding a men-only concert in Saudi Arabia.
- The tweets that sum up married life in a nutshell.
- Meet the workers who "sandblast Chernobyl's radioactive metal."
- Could you eat the "world's hottest pepper?"
- And have you paid attention to the news this past week? Test your knowledge with this week's HuffPost Headline Quiz.

This article has been updated with new information about the incident in Times Square.

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The Morning Email Editor, HuffPost

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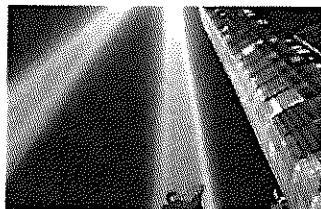
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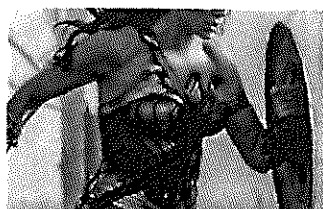
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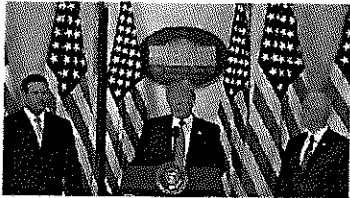


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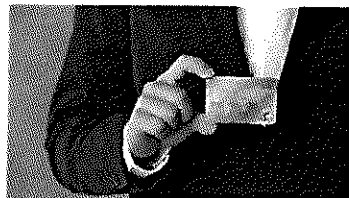


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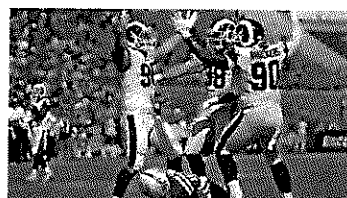
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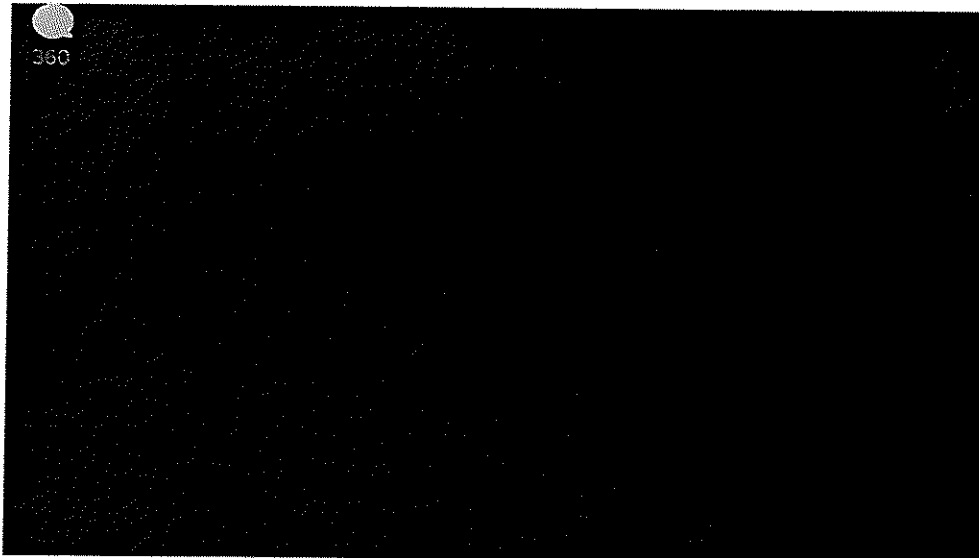
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POLITICS 05/22/2017 10:25 am ET | Updated May 22, 2017

Michael Flynn Pleads The Fifth And Refuses To Cooperate With Senate Russia Probe

The Senate intelligence committee subpoenaed documents from President Donald Trump's former national security adviser.

By Amanda Terkel



Former national security adviser Michael Flynn will not cooperate with a Senate intelligence committee investigation, invoking his Fifth Amendment right against self-incrimination Monday to avoid turning over documents lawmakers have subpoenaed related to his interactions with Russian officials.

Flynn resigned in February, after it was revealed that he lied about whether he had substantive contacts with the Russian ambassador before President Donald Trump took office.

In a letter to the leaders of the Senate intelligence committee posted by the Associated Press, Flynn's lawyer said that without "assurances against unfair prosecution," he would "respectfully decline your request for an interview and for



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the production of documents.”

“The context in which the Committee has called for General Flynn’s testimonial production of documents makes clear that he has more than a reasonable apprehension that any testimony he provides could be used against him,” Flynn attorney Robert Kelner wrote. “Multiple Members of Congress have demanded that he be investigated and even prosecuted. He is the target on nearly a daily basis of outrageous allegations... [that] feed the escalating public frenzy against him.”

“While we recognize General Flynn’s constitutional right to invoke the Fifth Amendment, we are disappointed he has chosen to disregard the Committee’s subpoena request for documents relevant and necessary to our investigation,” responded Sens. Richard Burr (R-N.C.) and Mark Warner (D-Va.), the chair and ranking member, respectively, of the committee. “We will vigorously pursue General Flynn’s testimony and his production of any and all pertinent materials pursuant to the Committee’s authorities.”

Trump kept Flynn in the administration long after the White House had been alerted to his ethics issues. Before Trump’s inauguration, Flynn had told the transition team that he was under federal investigation for secretly lobbying for the Turkish government during the campaign, according to The New York Times. Even with this information, Trump named him national security adviser.

During the campaign, Flynn criticized the technology specialist who set up Hillary Clinton’s private email server for invoking his Fifth Amendment rights during a court case.



General Flynn
@GenFlynn

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7:40 AM - Jun 23, 2016

353 435 274

Trump has also blasted Clinton associates for pleading the Fifth, arguing, “If you’re innocent, why are you taking the Fifth Amendment?”

The Senate intelligence committee has also requested documents from former Trump adviser Carter Page, who is so far refusing to cooperate. He told Business Insider Monday that he has no plans to plead the Fifth because he’s “never done anything wrong.”

Trump continued to keep Flynn on the job after Sally Yates, the acting attorney



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general, warned the White House that he could be subject to blackmail by the Russians for hiding his contacts with the ambassador.



The president is now under fire for reports that he urged FBI Director James Comey to drop his investigation into Flynn during an Oval Office meeting in February. Trump fired Comey last week and admitted that the bureau's Russia probe was on his mind when he did so.

The House intelligence committee also announced Thursday that it has requested documents from the Justice Department and the FBI related to Comey's dismissal and any conversations between Trump and the former FBI director.

Last week, Deputy Attorney General Rod Rosenstein named former FBI Director Robert Mueller as the special counsel in charge of investigating Russia's role in the 2016 election.

According to a Congressional Research Service report, Congress has three methods by which it can deal with Flynn's non-compliance: It can detain and imprison him until he complies, refer him to the executive branch (in this case, the Department of Justice) for criminal prosecution, or seek a civil judgment from a federal court that would compel Flynn to comply.

"Congress has to enforce the subpoena," Sen. Marco Rubio (R-Fla.), a member of the intelligence committee, said Monday. "We don't have a police force here, so it would require the Justice Department and the courts to do it."

Burr declined to say last week whether he would recommend a contempt of Congress vote regarding Flynn, stating, "I'm not going to go into what we might or might not do. We've got a full basket of things we might want to test."



Follow

It is Mike Flynn's right to plead the 5th. We will get to the truth one way or another. We need facts, not speculation & anonymous sources.

12:58 PM - May 22, 2017

77 55 160

NBC News reported Monday afternoon that two former Trump associates, Paul Manafort and Roger Stone, turned over documents to the Senate intelligence committee.

Laura Barron-Lopez contributed reporting.

This story has been updated to include official response from Flynn and the Senate intelligence committee, along with responses from other Trump associates.

Want more updates from Amanda Terkel? Sign up for her newsletter, Piping Hot Truth, [here](#).

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Amanda Terkel
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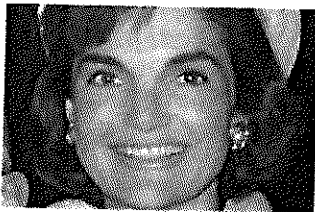
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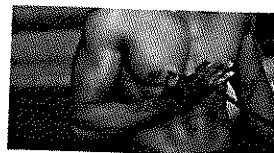
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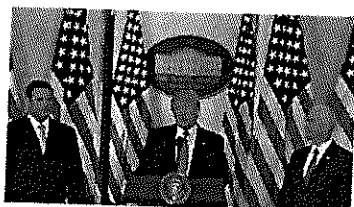


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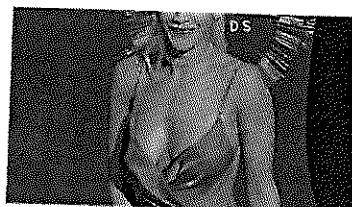


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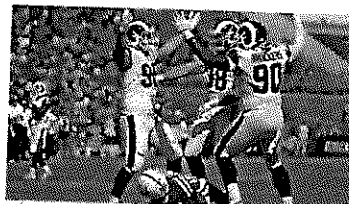


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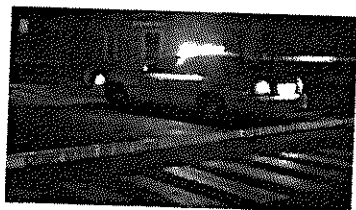
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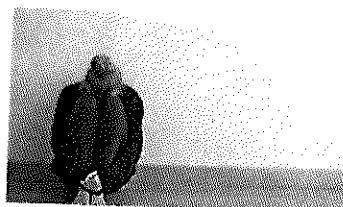
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